

STATE OF MICHIGAN
COURT OF APPEALS

GOPAL BEDI, MD,

Plaintiff-Appellant,

v

DEPARTMENT OF COMMUNITY HEALTH,

Defendant-Appellee.

UNPUBLISHED

January 16, 2007

No. 271121

Court of Claims

LC No. 05-000035-MK

Before: Murray, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition for defendant pursuant to MCR 2.116(C)(4) and (C)(10). We affirm.

Plaintiff, a psychiatrist, worked for the Michigan Department of Community Health (MDCH) from 1974 until his retirement in 2002. In 1989, plaintiff was named chief of clinical affairs for the Kalamazoo Regional Psychiatric Hospital. Beginning in November 1997, plaintiff was required to be on call 24 hours a day. He was not compensated for this service. Plaintiff filed a grievance with the MDCH on October 22, 2002. He claimed that he was classified as “Psychiatrist V” in the state job classification, that other state employees classified as “Psychiatrist V” received one hour of pay for every five hours they were on call, and that he was entitled to retroactive pay for his time spent on call between November 1997 and his retirement in 2002.

When the MDCH denied his grievance, plaintiff appealed the MDCH’s decision before the hearing office of the Michigan Department of Civil Service (MDCS). The MDCS denied plaintiff’s grievance, but noted that plaintiff had the right to appeal its decision to the circuit court. Plaintiff failed to appeal the MDCS ruling to the circuit court.

Plaintiff filed suit in the Court of Claims on February 14, 2005, alleging breach of contract for failure to pay plaintiff for time spent on call.¹ The Court of Claims dismissed

¹ Plaintiff also alleged that defendant violated the Elliott-Larsen Civil Rights Act. The trial court dismissed this claim pursuant to MCR 2.116(C)(7). Plaintiff does not challenge the dismissal of
(continued...)

plaintiff's breach of contract claim under MCR 2.116(C)(4) and (C)(10), finding that he failed to timely appeal the final decision of the MDCS and was not eligible for on-call compensation.

Plaintiff argues that the trial court erred when it concluded that it lacked subject-matter jurisdiction over plaintiff's claim. We do not agree. We review de novo the trial court's order granting summary disposition pursuant to MCR 2.116(C)(4). *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 157; 683 NW2d 755 (2004). Summary disposition under MCR 2.116(C)(4) is properly granted when plaintiff has failed to exhaust his administrative remedies. *Id.* We review issues of statutory interpretation de novo. *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005).

The Civil Service Commission (the commission) and the state personnel director have the power to determine compensation for classified employees, including plaintiff. Const 1963, art 11, § 5. The commission also prescribes the procedures by which the grievance of a state civil service employee may be reviewed. *Viculin v Dep't of Civil Service*, 386 Mich 375, 393; 192 NW2d 449 (1971).

However, the Court of Claims may not review a final decision of the MDCS. In *Bays v Dep't of State Police*, 89 Mich App 356, 359-360; 280 NW2d 526 (1979), officers with the Michigan State Police argued that they should receive compensation for "standby time," maintaining that this standby time was compensable as "actual hours worked." The *Bays* Court held that the officers' failure to exhaust their remedies before the Civil Service Commission precluded judicial review of their claims by this Court. It also noted, "[t]he Court of Claims, a statutory court of limited jurisdiction, has no power of judicial review of administrative action." *Id.* at 362, quoting *Greenfield Constr Co, Inc v Dep't of State Hwys*, 402 Mich 172, 222; 261 NW2d 718 (1978) (opinion of Levin, J.).

Although plaintiff argues that he is not seeking review of the final MDCS decision before the Court of Claims, but is bringing a new action for breach of contract, plaintiff requests that the Court of Claims grant relief that was denied by the MDCS. The *Bays* plaintiffs argued that "their action filed in the Court of Claims was not an appeal from the Civil Service Commission but rather a claim for compensation for past services." *Id.* at 360. This Court rejected that argument, holding, "[t]he instant plaintiffs were in effect asking the Court of Claims to exercise supervisory power over the Civil Service Commission. The Court of Claims has no power to do so." *Id.* at 361 (citations omitted). Similarly, by requesting that the Court of Claims grant the relief denied by the MDCS, plaintiff essentially asks the Court of Claims to oversee and review the actions of the MDCS. The Court of Claims does not have this authority.

Plaintiff argues that, pursuant to MCL 600.6419(1)(a), the Court of Claims had subject matter jurisdiction over his claim for breach of contract. We disagree. MCL 600.6419(1)(a) provides that the Court of Claims has power and jurisdiction "[t]o hear and determine all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any

(...continued)

this claim on appeal.

of its departments, commissions, boards, institutions, arms, or agencies.” However, MCL 600.6419(4) states, “This chapter shall not deprive the circuit court . . . of jurisdiction over . . . any other actions against state agencies based upon the statutes of this state in such case made and provided, which expressly confer jurisdiction thereof upon the circuit court”² Further, this Court has held that MCL 600.6419 “is not to be construed so as to deprive circuit courts of jurisdiction over review of state agency determinations.” *Bays, supra* at 362.³ Because plaintiff essentially requests review of an MDCS decision, the circuit court, not the Court of Claims, has jurisdiction over plaintiff’s breach of contract claim.

Next, plaintiff argues that he could only seek relief from the Court of Claims because he was not a party to the proceedings before the MDCS and, as a result, he could not have sought review of the agency’s decision in the circuit court. He notes that MCL 24.205(5) provides that a party is a person or entity in a “contested case” and that MCL 24.203(3) defines a “[c]ontested case” as “a proceeding . . . in which a determination . . . is required by law to be made by an agency after an opportunity for an evidentiary hearing.” Thus, plaintiff argues, because he did not have an evidentiary hearing before the MDCS, or an opportunity for one, he could not have been a party to the cause of action before the MDCS.

Yet as discussed *supra*, the Court of Claims lacks jurisdiction to review final decisions of the MDCS. Also, the MDCS did not conduct an evidentiary hearing because it concluded that it lacked jurisdiction to hear plaintiff’s claim. An individual is not entitled to an evidentiary hearing when his claim is barred as a matter of law. Further, plaintiff fails to cite authority establishing that, although he was a named party in the MDCS proceedings, he could be denied the opportunity to appeal an agency decision if no evidentiary hearing was held. Because plaintiff fails to provide authority to support his assertion that he was not a party to the administrative proceeding because he did not receive an evidentiary hearing, we need not consider his argument further. See *McCartney v Attorney Gen*, 231 Mich App 722, 725; 587 NW2d 824 (1998) (holding that this Court need not address a position or argument when the appellant fails to provide any authority to support it); see also *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (“It is not sufficient for a party simply to . . . assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments” (citations and internal quotations omitted)).

Also, plaintiff argues that he could not appeal the denial of the voluntary request that his employer made to the personnel director after the commission dismissed his grievance. However, plaintiff could have appealed the final decision of the MDCS before the circuit court and chose not to do so. Although plaintiff argues that he had no reason to appeal when the voluntary request from his employer was pending, he cites no authority indicating that a party need not appeal an adverse decision if it believes that an alternative means of recovery exists.

² MCL 24.301 through MCL 24.305 vest the circuit courts with power to review final decisions of the MDCS.

³ The version of MCL 600.6419(4) in effect is functionally identical with the current version, and we find that any changes between the two versions would not warrant a different result.

Accordingly, we need not consider this argument further. *McCartney, supra* at 725; *Wilson, supra* at 243.

Finally, plaintiff argues that the Court of Claims erred when it granted defendant's motion for summary disposition under MCR 2.116(C)(10) because plaintiff presented genuine issues of material fact. Because we conclude that the Court of Claims properly concluded that it lacked jurisdiction to grant plaintiff relief and dismissed plaintiff's cause of action for this reason, we need not consider whether plaintiff presented a question of fact regarding his breach of contract claim.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens